

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION (AKRON)

In re:

**JASON MICHAEL DOMONKAS,**  
  
Debtor.

CHAPTER 13 BANKRUPTCY

CASE NO.: 17-52862

JUDGE: ALAN M. KOSCHIK

**MOTION FOR HARDSHIP  
DISCHARGE**

Now comes the Debtor, Jason Michael Domonkas, by and through counsel, and respectfully moves this Court for an order granting a discharge pursuant to U.S.C. § 1328(b) for the reasons set forth below.

**I. Background and Facts**

The debtor is a single man and father of two children, 11 and 17. At the time of the filing of this proceeding, the debtor had a live-in partner and listed deductions for child support payments for his children in the amount of approximately \$375.40. (*See* Schedule I, listed as “Miscellaneous Deduction/Garnishment.”) However, that figure seriously undercounted his child support obligation at the time: the paystubs provided with his filing showed average monthly child support deductions of approximately \$669.01. (*See also* Summit County Child Support Enforcement Agency printouts, attached hereto as Exhibits A-B.)

His budget was tight even under the initial filing, with food expenses listed as \$250, transportation at \$130, entertainment at \$7 per month, and no personal care expenses or medical/dental expenses. After considering the impact of the

miscalculation of child support on his budget, it is clear that Mr. Domonkas had essentially no excess funds with which to service this plan.

Mr. Domonkas' financial situation became even worse through no fault of his own. Under the initial filing, the contribution of his partner, termed "Roommate's half of rent" on Schedule I filed herein, was \$362.50 per month. During the pendency of the case, Mr. Domonkas and his partner split up, leaving Mr. Domonkas to meet very similar financial obligations of the household without his former partner's contribution to expenses.

The within proceedings were filed on November 13, 2017. The debtor's plan was confirmed on March 7, 2018. Since the filing of this procedure, Mr. Domonkas has been making his Chapter 13 payments as ordered.

## **II. Applicable Law**

Section 1328(b) permits a "hardship discharge" for a debtor who has not completed all the payments under a Chapter 13 Plan at any point in time after confirmation of the plan, upon notice and hearing, after the debtor has met all requirements of subsection(b).

Section 1328(b) provides that the Court may grant a discharge to a debtor who has not completed payments under the Chapter 13 plan if:

- (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable.
- (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under Chapter 7 on such date; and
- (3) modification of the plan under section 1329 of this title is not practicable.

A “hardship discharge” may be sought when an intervening event giving rise to the debtor’s inability to complete performance under the Plan occurs. An additional financial strain which arises during the Chapter 13 process may or may not be sufficient to merit a “hardship discharge.” However, debtors need not prove a catastrophic event. A court should consider such factors as whether (1) the debtor presents substantial evidence of the ability and intent to perform at the time of the confirmation; (2) whether the debtor materially performed under the plan until the intervening event; (3) whether such event was reasonably foreseeable at the time of the confirmation; (4) whether such event is expected to continue; (5) whether the debtor had control over the event; and (6) whether the intervening event constitutes sufficient and proximate cause for the failure to make payments. *In re Brandhill*, 231 B.R. 836 (B.A.P. 1st Cir. 1999).

**A. The Debtor’s failure to complete plan payment is due to circumstances for which he should not justly be held accountable.**

The debtor meets the requirement of Section 1328(b)(1). Due to the breakup of the Debtor’s relationship, a significant portion of income has been removed from the debtor’s household. As a result, this loss of income has placed a significant strain on the debtor’s budget. Debtor cannot formulate a budget that realistically provides for the necessities of life, including food, clothing, and shelter. It is submitted that debtor’s failure to complete plan payment is due to the failure of his relationship, for which he should not justly be held accountable.

**B. The value, as of the effective date of the plan, of property actually distributed under the plan to each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the Debtor had been liquidated under Chapter 7 on such date.**

The Debtor meets the requirement of Section 1328(b)(2). It is submitted that there would be no assets from a liquidation under Chapter 7. There is no equity in his 2016 Hyundai Voloster, which he will be surrendering in any case because the monthly

payments are too high. He owns no other unexempt property and accordingly, his unsecured creditors would not have received anything more than they already did under this plan.

**C. Modification of the plan under § 1329 of this title is not practicable.**

Finally, the debtor meets the requirement of Section 1328(b)(3). Due to the limited financial resources of the Debtor and budgetary demands, it is impossible to formulate a plan under which one could reasonably expect the Debtor to exist.

Thus, the Debtor meets the requirements of Section 1328(b) and further satisfies the *In re Bandhill* guidelines. Consequently, he is requesting a “hardship discharge” and will be surrendering the 2016 Hyundai Voloster.

WHEREFORE, the Debtor prays that his Motion be granted.

Respectfully submitted,

/s/ Rebecca J. Sremack

Rebecca J. Sremack #0092313

William M. Sremack #0006832

Sremack Law Firm LLC

2745 South Arlington Road

Akron, Ohio 44312

Phone: 330.644.0061

Fax: 330.644.7241

info@sremacklaw.com

*Counsel for Debtor*

### CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2019, a copy of the foregoing *Motion for Hardship Discharge* was filed electronically via this Court's ECF system and served upon all parties indicated on the electronic filing receipt, namely:

Trustee Keith Rucinski

U.S. Trustee

It was also served this same date upon the creditors listed on the next page.

/s/ Rebecca J. Sremack

---

Rebecca J. Sremack #0092313

*Counsel for Debtor*

Label Matrix for local noticing  
0647-5  
Case 17-52862-amk  
Northern District of Ohio  
Akron  
Fri Apr 12 09:00:36 EDT 2019

Capital One  
P.O. Box 30285  
Salt Lake City, UT 84130-0285

Escallate, LLC  
5200 Stoneham Rd., Suite 200  
North Canton, OH 44720-1584

Hyundai Motor Finance  
Attention: Bankruptcy Department  
P.O. Box 20809  
Fountain Valley, CA 92728-0809

Quantum3 Group LLC as agent for  
MOMA Funding LLC  
PO Box 788  
Kirkland, WA 98083-0788

David A. Keith  
THE KEITH LAW OFFICE  
1650 S. Arlington Street  
Suite 3  
Akron, OH 44306-3891

455 John F. Seiberling Federal Building  
US Courthouse  
2 South Main Street  
Akron, OH 44308-1848

Capital One Bank (USA), N.A.  
PO Box 71083  
Charlotte, NC 28272-1083

Goodyear Credit Plan  
Processing Center  
P.O. Box 6403  
Sioux Falls, SD 57117-6403

Kohl's  
P.O. Box 3043  
Milwaukee, WI 53201-3043

Summit County Fiscal Office  
175 S. Main St., #400  
Akron, OH 44308-1308

Jason Michael Domonkas  
6690 Christan Rd.  
Clinton, OH 44216-9650

Buckle  
Comenity Bank  
Bankruptcy Department  
P.O. Box 182125  
Columbus, OH 43218-2125

Capital One, N.A.  
c/o Becket and Lee LLP  
PO Box 3001  
Malvern PA 19355-0701

Hyundai Capital America DBA  
Hyundai Motor Finance  
PO Box 20809  
Fountain Valley, CA 92728-0809

(p)PORTFOLIO RECOVERY ASSOCIATES LLC  
PO BOX 41067  
NORFOLK VA 23541-1067

Virginia Kilgore  
317 Keenan Ave.  
Cuyahoga Falls, OH 44221-2225

Keith Rucinski  
Chapter 13 Trustee  
One Cascade Plaza Suite 2020  
Akron, OH 44308-1160

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified  
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Portfolio Recovery Associates, LLC  
POB 12914  
Norfolk VA 23541

End of Label Matrix	
Mailable recipients	17
Bypassed recipients	0
Total	17